

REMARKS

With the cancellation of claims 13 and 14, claims 11, 12, and 15 to 30 are now pending.

It is respectfully submitted that all of the presently pending claims are allowable, and reconsideration of the present application is respectfully requested.

Applicants thank the Examiner for acknowledging the claim for foreign priority and for indicating that all of the certified copies of the priority documents have been received.

Applicants thank the Examiner for considering the previously filed Information Disclosure Statement, 1449 paper, and cited references.

Claim 17 was objected to for asserted informalities. Claim 17 has been amended herein without prejudice to obviate the present objection. Withdrawal of the objection is therefore respectfully requested.

Claims 11 to 30 were rejected under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 6,163,277 (the “Gehlot” reference).

It is noted that although the rejection heading includes claim 30 in the anticipation rejection, the Examiner has not addressed claim 30. Applicants request that the Examiner address claims 30 in the next Office communication.

Claims 13 and 14 have been canceled herein without prejudice, rendering moot the present rejection with respect to these claims.

As regards the anticipation rejections of the claims, to reject a claim under 35 U.S.C. § 102, the Office must demonstrate that each and every claim feature is identically described or contained in a single prior art reference. (See Scripps Clinic & Research Foundation v. Genentech, Inc., 18 U.S.P.Q.2d 1001, 1010 (Fed. Cir. 1991)). As explained herein, it is respectfully submitted that the Office Action does not meet this standard, for example, as to all of the features of the claims. Still further, not only must each of the claim features be identically described, an anticipatory reference must also enable a person having ordinary skill in the art to practice the claimed subject matter. (See Akzo, N.V. v. U.S.I.T.C., 1 U.S.P.Q.2d 1241, 1245 (Fed. Cir. 1986)).

As further regards the anticipation rejections, to the extent that the Office Action may be relying on the inherency doctrine, it is respectfully submitted that to rely on inherency, the Examiner must provide a “basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics *necessarily*

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flows from the teachings of the applied art.” (See M.P.E.P. § 2112; emphasis in original; and see *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Int'l. 1990)). Thus, the M.P.E.P. and the case law make clear that simply because a certain result or characteristic may occur in the prior art does not establish the inherency of that result or characteristic.

Claim 11, which has been amended herein without prejudice to include the subject matter of canceled claim 13, provides for creating a driver profile with regard to information absorption capacity and outputting, as a function of the driver profile, selected information to the driver. Claim 30 provides for a unit for determining a value of a driver state based on a driver profile with regard to information absorption capacity.

The Office Action asserts that figure 2, input 54 of the “Gehlot” reference discloses the driver profile of claim 11 (and 30). While the Office Action has addressed the feature of a driver profile, it has conveniently ignores the words in claims 11 and 30 that qualify the driver profile of the claims as one that is “with regard to information absorption capacity.” Element 54 of figure 2 refers to a driver profile, but does not state what the properties of the driver profile are. However, any review of the “Gehlot” reference makes plain that the driver profile of element 54 is a driver speeding pattern (such as how often and for what stretches of time the driver speeds), in particular, one that may be used to determine the recklessness of the driver; the driver profile of element 54 is not one that is with regard to an information absorption capacity.

Thus, the “Gehlot” reference does not identically disclose (or even suggest) each feature of either of claims 11 (or its dependent claims, *i.e.*, claims 12 and 15 to 29) and 30. It is therefore respectfully submitted that the “Gehlot” reference does not anticipate any of claims 11, 12, and 15 to 30.

Withdrawal of the anticipation rejections of claims 11, 12, and 15 to 30 is therefore respectfully requested.

Accordingly, all of pending claims 11, 12, and 15 to 30 are allowable.

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Conclusion

In view of the foregoing, it is respectfully submitted that all of claims 11, 12, and 15 to 30 are allowable. It is therefore respectfully requested that the objections and rejections be withdrawn. Prompt reconsideration and allowance of the present application are therefore respectfully requested.

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Respectfully submitted,

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